

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LAKISHA T. SMITH,

Plaintiff,

Case No.: 15-cv-11717
Hon. Stephen J. Murphy, III
Hon. Magistrate Mona K. Majzoub

vs.

STELLAR RECOVERY, INC. and
COMCAST CORPORATION, and
COMCAST OF DETROIT, LLC,

Defendants.

**DEFENDANT STELLAR RECOVERY, INC.'S, RESPONSE IN OPPOSITION TO AND
MOTION TO STRIKE PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S NOTICE
OF FILING SUPPLEMENTAL AUTHORITY**

COMES NOW, Defendant, Stellar Recovery, Inc. ("Stellar"), by and through its undersigned counsel, and hereby files this Response in Opposition to and Motion to Strike Plaintiff's Motion to Strike Defendant's Notice of Filing Supplemental Authority [DE 58].

Defendant Stellar properly filed two Notices of Supplemental Authority [DE 56 and DE 57] ("the Notices") bringing to the Court's attention recent and relevant legal precedent issued after the close of the dispositive motion briefing schedule. The Notices filed by Defendant are unquestionably proper from a procedural standpoint.

In response to the Defendant's Notices, Plaintiff filed the instant baseless motion to strike, which offers no valid legal argument showing why the Notices should be stricken. Instead, Plaintiff asserts unfounded arguments about the merits of the authority presented in the Notices and improperly seeks to make additional arguments in response to Defendant Stellar Recovery's Motion for Partial Summary Judgment [DE 44]. Plaintiff filed her Response to that Motion on August 4, 2016 [DE 47]; she did not request (and has made no showing that would warrant) leave

of court to make these additional and untimely legal arguments. *See generally* Fed. R. Civ. P 6(b) (describing the showing that must be made for relief from court ordered deadlines).

Plaintiff's instant Motion to Strike is, in fact, nothing more than an untimely and improper effort to file a supplemental response to Defendant Stellar's Motion for Partial Summary Judgment. Such a supplemental response filed without leave of court is expressly prohibited by LR 7.1 (c)(3), which provides "A party must obtain leave of court to file more than one response to a motion for summary judgment". The Court should accept Defendant Stellar's properly submitted supplemental authority and strike the Plaintiff's unauthorized supplemental response, filed under the misnomer of a Motion to Strike Defendant's Notice of Filing Supplemental Authority. *See generally Griffin v. Flagstar Bancorp, Inc.*, 2:10-cv-10610 (E.D. Mich. Jan 28, 2011).

To hold otherwise would discourage parties seeking to inform courts of new applicable authorities; that unwelcome and unwarranted outcome would undermine the purpose of allowing supplemental authorities to be presented. *See Sisk v. Abbott Labs.*, 1:11-cv-159, at 1 (W.D.N.C. Apr. 9, 2012) ("[A] notice of supplemental authority [is] commonly used in the federal court system to alert the Court to a decision of another court issued after the close of the briefing period. . . . To suggest that a party may not file such a notice and inform the Court of subsequent authority is nonsensical."); *Hornor, Townsend & Kent, Inc. v. Hamilton*, 1:01-cv-2979 J, at 11 (N.D. Ga. Sept. 30, 2004) ("[F]iling notices of supplemental authorities that come to a party's attention after briefing is complete is a well-established practice . . . [and] such practice is helpful to the Court, which of course always endeavors to apply current authority in resolving the issues before it.").

WHEREFORE, Defendant Stellar Recovery, Inc. hereby requests that this Court deny Plaintiff's requested relief, and requests that Plaintiff's Motion to Strike [DE 58] be itself stricken

as improper and untimely additional legal argument filed well outside of the Court-ordered briefing schedule for dispositive motions in this action.

Dated this 27th day of September, 2016.

Respectfully submitted,

/s/Alison N. Emery

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CERTIFICATE OF SERVICE

I, Alison Emery, Counsel for Stellar Recovery, hereby certify that on September 27, 2016 I electronically filed the foregoing document with the Clerk of Court for the United States District Court, Eastern District of Michigan, Southern Division, using the ECF system which will send notification of such filing to the attorneys of record.

Respectfully submitted,

/s/Alison N. Emery

Alison N. Emery